

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. BANK NATIONAL :  
ASSOCIATION, : Case No.: 18-cv-4044  
Plaintiff ,:  
v. :  
TRIAXX ASSET MANAGEMENT LLC., : New York, New York  
et al., :  
Defendants.: February 7, 2023  
-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE BARBARA C. MOSES  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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U.S. Bank BY: Alexander S. Lorenzo, Esq.  
National Assoc. Carla Doe, Esq.  
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For Defendant: FRIEDMAN KAPLAN SEILER  
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Transcript produced by transcription service.

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## PROCEEDINGS

1                   THE DEPUTY CLERK: The Court now calls  
2 the matter of U.S. Bank National Association v.  
3 Triaxx Asset Management, LLC et al.; Case Number:  
4 18-CV-4044.

5                   Counsel, please state your appearance and  
6 spell your last name for the record, starting with  
7 the plaintiff.

8                   MR. LORENZO: Good afternoon, Your Honor.  
9 Alex Lorenzo from Alston & Bird -- and that's  
10 L-O-R-E-N-Z-O -- for U.S. Bank National Association.  
11 And I'm joined by two of my colleagues, who -- I  
12 will let them introduce themselves.

13                  MS. DOE: Hi. This is Carla Doe, also on  
14 behalf of Alston & Bird -- on behalf of U.S. Bank.

15                  THE COURT: And spell your last name,  
16 please, Ms. Doe.

17                  MS. DOE: Yes, D-O-E.

18                  THE COURT: As in Jane Doe. You must  
19 hear that three times a day. I apologize.

20                  MS. DOE: No problem.

21                  MS. BUCKEL: And good afternoon, Your  
22 Honor. Elizabeth Buckel, also with Alston & Bird  
23 for U.S. Bank as trustee. My last name is spelled  
24 B-U-C-K-E-L.

25                  THE COURT: All right. Mr. Lorenzo,

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1 Ms. Doe, Ms. Buckel for U.S. Bank.

2 Let's go to Triaxx, the Triaxx parties.  
3 We have Friedman Kaplan, and we also have in-house  
4 counsel, correct?

5 MS. BEAUMONT: Yes, Your Honor. This is  
6 Anne Beaumont; Friedman Kaplan Seiler Adelman &  
7 Robbins for Triaxx Asset Management and Phoenix Real  
8 Estate Solutions. My last name is spelled B, as in  
9 boy, E-A-U-M-O-N-T.

10 THE COURT: Thank you.

11 MR. MARON: And, Your Honor, this is  
12 Matthew Maron, M-A-R-O-N, and I'm an in-house  
13 counsel for the TAM parties.

14 THE COURT: Right. And I saw your notice  
15 of appearance, so welcome to the case.

16 MR. MARON: Thank you.

17 THE COURT: Let's go to the CDOs now.

18 MR. RAINER: Good afternoon, Your Honor.  
19 This is Randall Rainer from Wollmuth Maher & Deutsch  
20 on behalf of each of the three issuers. And my last  
21 name is spelled R-A-I-N-E-R.

22 THE COURT: Mr. Rainer.

23 Let's see. PIMCO?

24 MR. SAVLA: Good afternoon, Your Honor.  
25 Sandeep Savla of Norton Rose Fulbright

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1 for PIMCO. I'm joined by, I believe, two of my  
2 colleagues. I'll let them introduce themselves.  
3 One of them has not entered an appearance and is  
4 simply observing.

5 THE COURT: Okay. And you are S-A-V-L-A,  
6 Savla, correct?

7 MR. SAVLA: Yes. S-A-V-L-A.

8 MR. LAURIELLO: Hello. This is Anthony  
9 Lauriello, also of Norton Rose Fulbright,  
10 representing PIMCO. My last name is spelled  
11 L-A-U-R-I-E-L-L-O. Thank you.

12 THE COURT: And does your observer wish  
13 to be introduced?

14 MR. SAVLA: I think he may be having tech  
15 issues, but to the extent he joins, his name is  
16 Brandt Vernon. Last name spelled V-E-R-N-O-N.

17 THE COURT: All right. Mr. Lauriello,  
18 Savla, Vernon, welcome.

19 And last, but certainly not least,  
20 Citigroup.

21 MR. MOSKOWITZ: Thank you, Your Honor.  
22 Good afternoon. Elliot Moskowitz of Davis Polk,  
23 representing Citigroup. My last name is spelled M,  
24 as in Mary, O S, as in Sam, K-O-W-I-T-Z. I am  
25 joined by my colleague, Adam Greene, and he can

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1 introduce himself and spell his name accordingly.

2 THE COURT: Okay.

3 MR. GREENE: Good afternoon, Your Honor.

4 Adam Greene of Davis Polk on behalf of Citigroup.

5 And that is G-R-E-E-N-E.

6 THE COURT: All right, Mr. Moskowitz,  
7 Mr. Greene. All right. I think that's everybody.

8 Let me tell you what I have in addition  
9 to the notice of appearance by Mr. Maron. I have a  
10 letter dated January 30th, signed by Mr. Maron,  
11 which I construe as asking for three things. Number  
12 one, an undefined delay in the pretrial deadlines  
13 and trial date for this case. Number two, a  
14 substitution of counsel, maybe, although no actual  
15 request for leave for present outside counsel to  
16 withdraw has been submitted. And a request in the  
17 nature of, I think, preliminary injunction that I  
18 direct the release or advancement of funds to pay  
19 either current counsel, current outside counsel,  
20 which would be Friedman Kaplan, or unspecified new  
21 incoming counsel who has not yet been identified.

22 That's how I read the letter. I'll  
23 circle back to that letter in a moment. I have also  
24 received responding letters. Well, I would say,  
25 first, a follow-up letter from Ms. Beaumont at

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1 Friedman Kaplan, which seems to kind of hint that  
2 maybe the firm wants to withdraw, but it's not  
3 actually, as I read it, an application for leave to  
4 withdraw. Certainly not one that complies with  
5 Local Civil Rule 1.4.

6 Then I received two letters on  
7 February 1, one from PIMCO saying that I should not  
8 permit current outside counsel to withdraw or  
9 advance any fees or delay the trial, and one from  
10 the trustee, U.S. Bank, saying, more or less, the  
11 same thing and raising some questions about what the  
12 heck is going on with respect to the TAM parties.

13 So who is speaking for the TAM parties  
14 today on this call?

15 MR. MARON: Your Honor, it's Matthew  
16 Maron, and as I mentioned, I'm in-house counsel for  
17 TAM. I want to just -- I know you laid out the  
18 three things we're asking for, but just, at the end  
19 of our letter, we actually set a time deadline.  
20 We're asking for 60 days. We wouldn't put something  
21 before you that was undefined. That wouldn't be  
22 right. So, I mean, that's just the one thing. But,  
23 otherwise, the other things that you had mentioned  
24 were accurate.

25 THE COURT: Okay. So you are correct. I

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1 stand corrected. You have asked for 60 days on  
2 everything. And by "everything" -- I am taking a  
3 look now at my pretrial scheduling order, which I  
4 issued on September the 19th of last year. At  
5 present, the joint pretrial order is due on  
6 February 22nd. That's about two weeks away. And  
7 then there are a series of deadlines leading up to  
8 the start of trial on April the 17th, two months and  
9 a little bit away.

10 So, Mr. Maron, I have to say, I am  
11 surprised and curious at getting this application at  
12 this time. When I set the trial schedule, when I  
13 set the trial date, I did it mostly in the  
14 courtroom. And I took a poll, if I recall -- not a  
15 formal poll -- but I asked all of the lawyers  
16 present, including counsel for the TAM parties, what  
17 trial date do you want? Everybody agreed that April  
18 would be great, thank you very much, Your Honor. So  
19 I issued an order saying, fine, we're going to have  
20 a trial in April.

21 That was four months ago. And if, as you  
22 now say, this has been a problem that has been  
23 building for literally years and years and years --  
24 after all, Triaxx Asset Management hasn't been paid  
25 since, I believe, 2018, and Friedman Kaplan

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1 complained about that from time to time in the  
2 courtroom, so this is not a new problem, why am I  
3 hearing about it two months before trial?

4 MR. MARON: Well, Your Honor, there's  
5 been a couple things that obviously happened since  
6 that I wanted to share, since you set the trial date  
7 for April, which we were keenly aware of. You know,  
8 we attempted to try to mediate the matter in  
9 December. We were -- for settlement. We were  
10 unsuccessful in doing that.

11 We were informed by Friedman Kaplan less  
12 than two weeks ago, on January 24th, that they would  
13 be seeking leave to withdraw. The moment we found  
14 that out, we immediately began the efforts to try to  
15 find new trial counsel. And I'm sure you can  
16 understand getting to find somebody to get ready for  
17 trial in a matter like this that's going to happen  
18 in under three months, it takes almost a Herculean  
19 effort to be able to do something like that. So,  
20 henceforth, why we decided to put this application  
21 before you to seek the extension time that we  
22 sought, as well as the issue concerning payment of  
23 funds.

24 As I mentioned in the letter that there  
25 have been -- you know, we've done every effort for

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1 non -- certain non-parties to pay Friedman Kaplan to  
2 keep them going. Obviously, they're a law firm,  
3 they need to be paid -- you know, they need to be  
4 paid for going to work. They're not going to do it  
5 for free. But, now, we're in a situation where, you  
6 know, our hands are tied. We -- you know, they've  
7 indicated they don't want to stay in this case going  
8 forward, and we need to find some way to be able to  
9 get someone to defend us.

10           We're the defendants in this case. We  
11 need to have counsel, you know, have -- and have  
12 able counsel to help us at trial. And the requests  
13 we seek we think are reasonable. We want the time  
14 to be able to secure and lock down trial counsel.  
15 But in addition, we wanted to be able to make the  
16 attempt to be able to unlock only a portion of what  
17 is around \$16 million in the retained funds in  
18 escrow to be able to pay Friedman Kaplan, to give  
19 them something, and to put money towards a new trial  
20 counsel.

21           I think, given that, and I understand the  
22 history, and you are, you know, well aware of the  
23 history of this dispute, it's been going on for  
24 almost five years, that we thought this was a  
25 request that was reasonable to put before you at

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1 this time.

2 THE COURT: Ms. Beaumont?

3 MS. BEAUMONT: Your Honor, it's --

4 THE COURT: No, no. I have a question  
5 for you, Ms. Beaumont.

6 MS. BEAUMONT: Yes.

7 THE COURT: You've been with us  
8 representing the TAM parties in this matter since  
9 2018. You were representing the TAM parties in 2019  
10 when you weren't getting paid, in 2020 when you  
11 weren't getting paid, or if you were getting paid,  
12 you were being paid partially by these mysterious  
13 non-parties. But whatever. That was your situation  
14 in 2019, 2020, 2021, 2022.

15 Please explain to me how a firm,  
16 particularly a firm of your stature, talent and  
17 reputation, could tell your client two and a half  
18 months before trial that you're bailing when this  
19 situation hasn't changed for years?

20 MS. BEAUMONT: Well, it may help if I try  
21 to explain, kind of, the sequence of events that has  
22 led us here.

23 Prior to the case being assigned to Your  
24 Honor for all purposes, our firm originally only  
25 represented Phoenix. At some point in late 2018, it

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1 was claimed that the Arnold & Porter firm, which was  
2 then representing Triaxx Asset Management, may have  
3 had a conflict with respect to Goldman Sachs, which  
4 the Court will recall was at one point a party to  
5 the case. And in light of that, and in order to  
6 reduce the overall spend associated with the case,  
7 our firm was engaged to represent both Phoenix Real  
8 Estate Solutions and Triaxx Asset Management --

9                   THE COURT: Which you have done  
10 (inaudible) ever since.

11                   MS. BEAUMONT: Thank you very much,  
12 Your Honor. I don't take that lightly.

13                   As -- and we were very clear that we were  
14 not, by any stretch, doing this on a contingency  
15 basis, and we were assured that we would be paid.  
16 And for some short period of time, we were. We were  
17 assured multiple times over the years that  
18 eventually we would be paid what we are owed. We  
19 made various accommodations to the client in light  
20 of the overall relationship that we do have, and we  
21 assured and we believed our client when they told us  
22 that we would be paid.

23                   As of the end of January --

24                   THE COURT: Let me just interrupt you  
25 there. Where did you think you would be paid from

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1 since the CDO funds were frozen?

2 MS. BEAUMONT: I guess that is something  
3 I -- I'm not sure I feel comfortable discussing that  
4 with all the parties on the phone. I -- perhaps  
5 Mr. Maron wants to weigh in on that. That's not the  
6 sort of thing that is -- ordinarily we would get  
7 into it in this group.

8 THE COURT: If you make a motion for  
9 leave to withdraw, under Local Civil Rule 1.4,  
10 you're going to have to discuss that. But why don't  
11 you continue with your --

12 MS. BEAUMONT: Okay.

13 THE COURT: -- response.

14 MS. BEAUMONT: So as of this time, our  
15 firm is owed over \$2 million. And our firm is a  
16 small firm. We don't have hundreds of lawyers like  
17 each of the other firms on the phone here, other  
18 than Mr. Rainer's firm. And that enormous  
19 outstanding balance has already caused enormous  
20 financial hardship to our firm.

21 There was a mediation before Judge  
22 Holwell in December, and there was some hope that  
23 that mediation would obviate the need for us to seek  
24 to withdraw. The case, obviously, was not resolved  
25 at that mediation. And in the weeks after that

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1 mediation, it really became clear for the first time  
2 that our firm was not going to be paid.

3 THE COURT: Was that mediation amongst --  
4 was it a global mediation amongst all of the parties  
5 here, or was it just that slice of the case?

6 MS. BEAUMONT: It was the -- it was a  
7 global mediation.

8 THE COURT: All right. Go ahead.

9 MS. BEAUMONT: And in light of this new  
10 information that we were not, in fact, going to be  
11 paid, or, I guess, perhaps more precisely, that our  
12 clients, at last, told us that it was not possible  
13 to pay us, we advised our clients, specifically Mr.  
14 Maron, that we were going to seek leave of this  
15 Court to withdraw. And we sent Mr. Maron copies of  
16 the draft withdrawal motion papers.

17 Mr. Maron stated that the clients were  
18 seeking replacement counsel and asked that we wait  
19 to move to withdraw in the hope that we could be  
20 replaced with substitute counsel. And I told  
21 Mr. Maron that we would do so no later than  
22 February 1st, on which date, we were going to file  
23 the motion.

24 On January 30th, I asked Mr. Maron for an  
25 update on the status of the retention of other

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1 counsel. And a couple of hours later, Mr. Maron  
2 filed a notice of appearance in the case, followed  
3 by his letter. And we were not aware of these  
4 filings ahead of time, and we were not involved in  
5 their preparation or filing.

6 Recognizing that Mr. Maron's letter  
7 would, in all likelihood, not be viewed as  
8 satisfying Local Rule 1.4, we wanted to make clear  
9 to the Court that we are ready, willing and able to  
10 file a motion to withdraw that does satisfy those  
11 requirements, and that our firm is asserting a  
12 charging lien. And that is why I filed the  
13 January 31st letter.

14 We remain prepared to file such a motion.  
15 We didn't think it was appropriate to do that once  
16 Your Honor had scheduled this conference. But to be  
17 sure, this is not a situation that we take lightly,  
18 and we don't lightly seek to withdraw from any  
19 representation, but we have gone from a situation in  
20 which we were assured over and over of being paid to  
21 a situation in which we are now told we cannot be  
22 paid. And it is not tenable for our firm and for  
23 multiple lawyers in my firm to effectively work for  
24 the next several months for free, in addition to all  
25 the work we, as it turns out, seem to have done for

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1 free for the past couple of years. And so --

2 THE COURT: Do I understand correctly  
3 that there have been partial payments from some  
4 source?

5 MS. BEAUMONT: Yes. Yes.

6 THE COURT: Okay. But you're still  
7 \$2 million short, roughly?

8 MS. BEAUMONT: That's correct.

9 THE COURT: Can you divulge to me what  
10 percentage of your overall bill that represents?

11 MS. BEAUMONT: Well, we have been paid, I  
12 believe -- I'm sorry. I don't have the figure right  
13 in front of me, but I think we've been paid about  
14 \$1 million. Is it \$2 million? \$2 million. So I  
15 guess it's about half.

16 THE COURT: So you've been paid about --

17 MS. BEAUMONT: We have it divided up  
18 between the two clients, so I don't...

19 THE COURT: And is the payment deficit on  
20 behalf of both of your clients or just on behalf of  
21 Triaxx Asset Management? Does Phoenix have funds to  
22 pay you?

23 MS. BEAUMONT: It is on behalf of both  
24 clients.

25 THE COURT: Okay.

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1 MS. BEAUMONT: Roughly, half and half.

2 THE COURT: All right. So, Mr. Maron, I  
3 think I have a question for you, which is that,  
4 since your current counsel is \$2 million in the hole  
5 and you have informed them that they will not be  
6 paid and they're going to assert a charging lien  
7 against you, who are you going to get to take this  
8 case? How are you going to pay them?

9 MR. MARON: Hopefully, someone less  
10 expensive.

11 THE COURT: Well --

12 MR. MARON: (Audio distortion) --  
13 somebody. We can't handle -- and I, obviously,  
14 being the in-house lawyer, can't handle this as  
15 trial counsel. And we're going to have to have --  
16 we're going to need a firm, so we're in the -- we're  
17 trying to find that right now, and we've been  
18 trying.

19 THE COURT: That's a very -- that's a  
20 very real and a very practical question. You say,  
21 "someone less expensive," but nobody, no matter  
22 whether they charge \$1,000 an hour or \$100 an hour,  
23 is going to take a case a few months before trial  
24 with zero payment, are they?

25 MR. MARON: I would venture to think that

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1 there would be something. You know, one of the  
2 things, as I mentioned at the outset of the call, is  
3 that there's money that was earmarked in the  
4 retained funds for Friedman Kaplan. That money is  
5 sitting there in escrow, and it's being held up by  
6 the trustee. We would love to be able to free that  
7 money up to cover Friedman Kaplan's bills, but we  
8 can't at this time, given the current status of  
9 where the case sits right now.

10                 But in the meantime, we have to find  
11 something, you know, and we're -- again, as I said  
12 from the outset, we're trying. And if it's someone  
13 who's going to be, you know, less expensive or, you  
14 know, half the price per hour rate, you know, so be  
15 it.

16                 THE COURT: I'm looking at your  
17 January 30th letter in which you said -- and this  
18 was a week ago now, that you have "immediately began  
19 speaking with new law firms about trial  
20 representation," and you were close to securing new  
21 counsel.

22                 MR. MARON: Right.

23                 THE COURT: What happened? You said you  
24 would be ready in a --

25                 MR. MARON: The conversation --

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1                   THE COURT: You said you would be ready  
2 in a matter of days.

3                   MR. MARON: Right, but those are -- you  
4 know, again, I was hoping to get that locked up, you  
5 know, by the -- around -- in or around the days  
6 after the letter. But, again, it's taken a couple  
7 days also with this application now in the  
8 conference before Your Honor. You know, there's  
9 still some moving parts in this. So I apologize if  
10 that hasn't been done with that -- with the -- that  
11 expediency.

12                  THE COURT: All right. So you don't have  
13 new counsel, and it doesn't sound like you're  
14 particularly close to having new counsel, correct?

15                  MR. MARON: I -- it's not like we're  
16 completely far off. I would think that -- like I  
17 said, I would like to -- you know, if it's by the  
18 end of, you know, next week, you know, I'd love to  
19 be able to get someone set and be able to inform the  
20 Court of, you know, the appearance of trial counsel.

21                  THE COURT: Well, we'd all love that, but  
22 I'm trying --

23                  MR. MARON: Well, yeah.

24                  THE COURT: -- to sense, Mr. Maron, as to  
25 whether you're just blowing smoke here because I

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1 don't see who you're going to get or who would say  
2 yes to you, given the bleak picture that you've  
3 painted.

4 MR. MARON: I have to make the -- I have  
5 to make -- the application was made, like, I have to  
6 be able to do it. And if there's some other  
7 arrangement that can be done from a financial  
8 standpoint, you know, I have to at least try. Like,  
9 I -- we can't not defend ourselves. We -- and  
10 that's, you know, something --

11 THE COURT: No, you can't, but --

12 MR. MARON: -- especially as a corporate  
13 defendant.

14 THE COURT: I agree with you, that  
15 although you are a member of the Bar, I'm guessing  
16 here that you're not equipped to try the case by  
17 yourself.

18 MR. MARON: Sadly, no.

19 THE COURT: I get that. But there's some  
20 other options here. As everyone on this call is  
21 aware, a motion for leave to withdraw is committed  
22 to the sound discretion of the trial judge. And one  
23 of the considerations for the trial judge -- in this  
24 case, me -- is how close to trial are we and to what  
25 extent would that process and the other parties be

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1 prejudiced if I let counsel out? And if the answer  
2 is that this case will never come to trial because  
3 Triaxx Asset Management is never going to get it  
4 back together to actually find trial counsel to  
5 represent it, then the answer is, I shouldn't let  
6 current counsel out.

7 Let me tell you what my tentative views  
8 are, and then I'm going to give the noteholders and  
9 the trustee an opportunity to weigh in. But my  
10 tentative view at this point is that, of course,  
11 Friedman Kaplan can make the application should it  
12 wish to do so. I give you no guarantee that it will  
13 be granted, given the considerations that I just  
14 outlined.

15 The TAM parties are, of course, free to  
16 make a motion, which I do view as a motion in the  
17 nature of a preliminary injunction motion for the  
18 release of funds sufficient to pay its trial  
19 counsel. But given that that motion has already  
20 been denied not once, but twice by Judge Marrero  
21 when he had this case. He denied it initially, and  
22 then again, as you know, on reconsideration. I  
23 think that was back in -- was that 2018 or 2019?

24 And given that I haven't heard a peep  
25 about this issue for the last, approximately, four

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1 years, it seems to me that all of the issues that  
2 resulted in Judge Marrero's decision are still going  
3 to be a problem for the TAM parties.

4 Plus, now, they'll have the additional  
5 issue of not having -- ironically, not having sought  
6 the injunctive relief in a timely fashion to prevent  
7 the alleged irreparable harm. So I think that's  
8 going to be uphill sledding as well.

9 So that's kind of where I'm coming from  
10 on this, but let me hear -- Mr. Savla, do you want  
11 to chime in for the noteholders?

12 MR. SAVLA: Yes, Your Honor. I'm happy  
13 to begin, and Mr. Moskowitz can amplify as needed.

14 As a housekeeping matter, I'll just note  
15 that our submission was a joint submission by both  
16 PIMCO and Citi. But moving on to the substance, the  
17 first thing is, at least from PIMCO's perspective,  
18 having read the motion, the letter motion by  
19 Mr. Maron, it's unclear whether there's an inability  
20 to pay or a reluctance to pay, because on page 2 of  
21 the letter motion it states, "Absent advancement  
22 now, one or more parties will be required to come  
23 out of pocket even more to pay for replacement  
24 counsel."

25 So the assertion seems to be that -- not

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1 so much -- at least in that sentence, not so much  
2 that there's an inability to pay, but a lack of  
3 willingness to pay. So that's the first point we'll  
4 make. In terms of Your Honor's sound discretion,  
5 one of the considerations is whether the attorney's  
6 client is truly unable to fulfill the payment  
7 obligations.

8                   The second point is that, as  
9 Judge Marrero noted in his decision on the  
10 reconsideration motion, the then general counsel of  
11 Triaxx Asset Management said Triaxx does not have  
12 available funds or sources of income sufficient to  
13 advance counsel fees pending the outcome of this  
14 litigation. He put that in an affidavit that was  
15 filed with the Court. And Judge Marrero noted that  
16 in his decision of January 2019. It really begs the  
17 question as to what sources of funds, if any, have  
18 been paid to Friedman Kaplan in the intervening  
19 period. And it also deserves scrutiny now as to  
20 these assertions because, clearly, between January  
21 2019 through the present, there's been some  
22 arrangement with Friedman Kaplan, notwithstanding  
23 the assertion in the Calamari (phonetic)  
24 declaration. And this seems to be a repeat of an  
25 assertion that was made back in January of 2019.

## PROCEEDINGS

1                   The third point is, to echo what the  
2 Court said, it's surprising to PIMCO that this issue  
3 is being raised on the cusp of trial, given that  
4 this seems -- it seems to be a long-running issue.  
5 And the assertion that the tipping point was a  
6 mediation that took place just seems like it's too  
7 little too late. This has been a long-running  
8 issue, and it can't be that the decision whether to  
9 withdraw or not hinged on a single mediation. And  
10 so we submit that these issues deserve more  
11 scrutiny.

12                  The other thing is, as Judge Nathan found  
13 in her trial dealing with the Triaxx/Phoenix work,  
14 these are interrelated parties. And so when  
15 Mr. Maron refers to certain non-parties that have  
16 been funding the litigation, I think that opens the  
17 door to precisely the identity of these non-parties.  
18 Because one of the inquiries that the trial -- that  
19 the Court can undertake is whether there's been an  
20 inducement to withdraw -- an inducement to withdraw  
21 an attorney by non-payment of fees in order to stall  
22 the judicial proceedings.

23                  And so -- and given that there are these  
24 related parties, notably, Mr. Maron, when he entered  
25 the notice of appearance, used a 1/0 Capital e-mail

## PROCEEDINGS

1 address, he is filing a letter on Triaxx Asset  
2 Management's letterhead, but is appearing for  
3 Phoenix. And we see from Judge Nathan's decision  
4 that these parties are all interrelated. They have  
5 the same address and the principals work at these  
6 same entities. Both Judge Nathan found and  
7 discovery has shown that there's been movement of  
8 assets between these entities. And so I think we  
9 would take the position that we're entitled to know  
10 how it is -- you know, which non-party has been  
11 paying, and why is it that now the non-party has  
12 apparently decided to stop paying?

13 The next point is advancement. There's  
14 no provision in the Collateral Management Agreement  
15 for advancement and nor has any been cited. So we  
16 would submit that there's no contractual support for  
17 an advancement argument. Even putting aside the  
18 fact that Judge Marrero has already ruled on these  
19 issues, Your Honor ruled in the context of her  
20 decision on the motion for judgment on the  
21 pleadings, and we've also cited a New York State  
22 Court case to the same effect. And so I think with  
23 that, I'll stop and pause my submissions there.

24 THE COURT: Thank you, Mr. Savla. A  
25 couple of actual -- actually, a couple of follow-up

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1       questions, not to you, but prompted by what you just  
2       said.

3                   Mr. Maron, Mr. Savla, I think, did make a  
4       fair point, that there seems to be some tension  
5       between what you say on page 2 of your January 30th  
6       letter, where you write that it would be "unjust and  
7       inequitable that those non-parties be required to  
8       pay for remaining outstanding fees or soon to be  
9       incurred trial fees."

10          That suggests that it is possible to get  
11       Friedman Kaplan paid via these non-parties. And  
12       what Ms. Beaumont told me, her firm was told by  
13       Triaxx, which is simply, you won't get paid, it's  
14       not going to happen. So perhaps you could --  
15       perhaps you could address that point, please.

16          MR. MARON: I -- it's -- again, it's not  
17       questionable and just, like, we just -- we can't.  
18       We can't do -- we can't under the current -- we  
19       can't do it right now. And -- you know, and one of  
20       the things -- I know Mr. Savla took the position,  
21       but we said in our letter that --

22          THE COURT: So what did you mean in your  
23       letter, Mr. Maron, when you said it would be unjust  
24       and inequitable to have those non-parties continue  
25       to pay?

## PROCEEDINGS

1                   MR. MARON: Because if they're  
2 non-parties that are trying to, basically, fund and  
3 put money into this case on behalf of the defense of  
4 these parties who are, you know, not necessarily  
5 obligated to do so -- they're doing it to prevent,  
6 you know, obviously, default from happening -- it  
7 can't continue the way it is because they would  
8 be -- they're forced to come out of pocket on  
9 something that they're not necessarily -- that  
10 they're not necessarily required -- they're doing it  
11 because, obviously, they want to prevent default  
12 from happening or anything of that sort.

13                  So, at this point, you know, we're trying  
14 to basically use this as a way to open up the  
15 opportunity -- and I know you mentioned about the  
16 prior applications before Judge Marrero -- to get,  
17 you know, this small portion of what's in the  
18 retained funds to be able to use it to pay  
19 Friedman Kaplan, and to potentially get to new trial  
20 counsel, which is what the whole main point of what  
21 we're asking for, the -- which is, I think, the  
22 whole point of our letter application.

23                  THE COURT: Yeah, I -- I'm not sure  
24 you've completely answered my question. It may be  
25 that this will have to be elucidated under oath in a

## PROCEEDINGS

1 Rule 1.4 application, where I would require more  
2 granular detail. For future reference, I do  
3 ordinarily require -- permit, I should say. I do  
4 ordinarily permit, at least in the first instance,  
5 that sensitive portions of affidavits or  
6 declarations supporting motions for leave to be --  
7 motions for leave to withdraw be filed under seal.  
8 But that motion as well, the sealing motion, you  
9 know, has to be considered by me under the strict  
10 standards of the Lugosch decision, so I can't -- I  
11 can't guarantee you that whatever your financial  
12 arrangements are will not be revealed to the other  
13 parties here.

14                 But speaking of financial arrangements  
15 and other parties, as Mr. Savla was speaking, I  
16 remembered, or I thought I remembered that the  
17 issuers in this case have made some sort of  
18 arrangement, have they not, to have their legal fees  
19 advanced? Who can speak to that?

20                 MR. RAINER: This is Mr. Rainer. I can  
21 on behalf of the issuers.

22                 We reached a stipulation with the other  
23 parties, principally with the noteholders, who had  
24 objected to the resumption of our fees on a  
25 going-forward basis in the case. So it was

## PROCEEDINGS

1 simply -- and so that's coming out of the monthly  
2 available cash flows of the underlying transactions.

3 THE COURT: So you are getting paid?

4 MR. RAINER: Well, the objection --

5 they've stood down on the objection. We are subject  
6 to cash flows, and there was a long gap of  
7 payment -- of non-payment that we're actually in the  
8 process of exploring. But for the most part, we are  
9 being paid, and the prior objection to our payment  
10 has been held in abeyance.

11 THE COURT: Okay. And has -- have the  
12 TAM parties attempted to negotiate something with  
13 the trustees and the trustee and/or the noteholders?

14 MR. MARON: The whole -- sorry. Go  
15 ahead.

16 MS. BEAUMONT: Your Honor, we have not,  
17 but I -- we viewed that as a futile exercise.

18 THE COURT: Because you think Mr. Savla  
19 and his clients are going to say no, no, and forget  
20 about it?

21 MS. BEAUMONT: I'm confident they would.

22 THE COURT: Okay.

23 MR. LORENZO: Your Honor -- oh, go ahead.

24 THE COURT: Go ahead.

25 MR. LORENZO: This is Alex Lorenzo from

## PROCEEDINGS

1 Alston & Bird. Mr. --

2 THE COURT: I had not forgotten you. I  
3 was going to give you a chance to speak.

4 MR. LORENZO: Well, no -- and I don't  
5 mean to jump in. I just wanted to highlight  
6 something that Mr. Rainer, I think, alluded to,  
7 which is one of the issues -- and this is in the  
8 note valuation report, so everybody's aware of it.  
9 But by virtue of a number of circumstances,  
10 primarily the fact that a bunch of the collateral  
11 was three year defaulted -- and there's a whole  
12 series of litigation about whether the collateral  
13 manager had to sell that collateral or had the  
14 option not to, and two courts ruled that it had to  
15 be sold.

16 The deals, and especially two of the  
17 deals, don't have significant assets at this point.  
18 And so what Mr. Rainer was alluding to is that there  
19 is not a tremendous amount of cash flow coming in  
20 such that there really isn't sufficient funds on a,  
21 sort of, month-to-month basis. Certainly, some  
22 months, there's a little bit more, but these are  
23 not, sort of, going strong deals, at least 061 and  
24 071. And so that is just -- it's another  
25 consideration as we're talking about, sort of,

## PROCEEDINGS

1 potential solutions.

2 THE COURT: All right. But on the other  
3 hand, the TAM parties have been required to be far  
4 more active in this litigation than the issuers  
5 have, so I'm sure there's also a difference in the  
6 size of the bills.

7 MR. RAINER: This is Mr. Rainer. I will  
8 say, Your Honor, there is in a relative basis, but  
9 as it stands, we're still owed a half a million  
10 dollars.

11 THE COURT: I'm sorry to hear that, but  
12 that was a little bit of a side excursion because  
13 you don't have -- you don't have a letter motion  
14 before me today.

15 MR. RAINER: I do not.

16 THE COURT: All right. Mr. Lorenzo --

17 MR. RAINER: Your Honor --

18 THE COURT: -- what else do you want me  
19 to know?

20 MR. LORENZO: So I think Mr. Savla has  
21 covered most of the points. As Your Honor alluded  
22 to, I mean, the TAM party's letter motion just  
23 raises a host of questions.

24 I will say this, sort of, one other, just  
25 practical point that has come up in the discussions,

## PROCEEDINGS

1 that the retained funds are all earmarked. So that  
2 it's not a situation where there is, sort of, an  
3 undifferentiated amount of money that has been  
4 retained pursuant to the --

5 THE COURT: No. If the TAM parties  
6 prevail at trial, they get a lot of money, right?

7 MR. LORENZO: They get a lot of money,  
8 but, specifically, they have directed, basically,  
9 how every dollar should be allocated pursuant to the  
10 process for the note valuation reports each month so  
11 that there isn't -- there's, sort of, practical  
12 questions about -- there isn't, sort of, unallocated  
13 funds that could be used for advancement of legal  
14 fees.

15 THE COURT: Well, aren't some of the  
16 earmarked funds -- don't some of the earmarked funds  
17 represent unpaid legal fees? I thought that was one  
18 of the things you were withholding for.

19 MR. LORENZO: That is correct, Your  
20 Honor, but that would be -- well -- and this is one  
21 of the questions we have, to the extent that TAM --  
22 the Friedman Kaplan firm has been paid amounts, if  
23 amounts were released from the retained funds, would  
24 that make them whole, or would there then be a  
25 refund to the unnamed third parties? Sort of, what

## PROCEEDINGS

1 exactly is going on and what is requested?

2 THE COURT: So that's an interesting  
3 question as well. Are these payments by the unnamed  
4 non-parties -- have they been previously reported to  
5 the trustee, or has that been not a process you've  
6 had visibility into?

7 MR. LORENZO: We have not had visibility  
8 into that, Your Honor.

9 THE COURT: All right. So let me ask the  
10 TAM parties then. I don't know if this is a  
11 question for Mr. Maron or Ms. Beaumont. Either one  
12 of you can take it.

13 The amounts that you have -- the TAM  
14 parties have requested for legal fees from the  
15 trustee that the trustee has withheld and reserved,  
16 are those gross numbers or net numbers? Is that a  
17 clear enough question?

18 MS. BEAUMONT: I believe Mr. Maron is in  
19 the best position to speak to that.

20 THE COURT: Okay. Do you understand the  
21 question?

22 MR. MARON: Can you say it again, please.

23 THE COURT: Sure. I'll do it in round  
24 numbers as a hypothetical. Friedman Kaplan has  
25 billed you \$4 million, roughly, over the course of

## PROCEEDINGS

1       this case, but someone other than Phoenix or Triaxx  
2       Asset Management has paid roughly 2 million of that.

3                  Have you requested and has the trustee  
4       withheld for legal fees 2 million or 4 million?

5                  MR. MARON: Less than. It's about -- I  
6       believe they've held back 2 million.

7                  THE COURT: 2 million. So the amount  
8       that you've reported in unpaid legal fees that you  
9       still want the trustee to release is only 2 million?

10                 MR. MARON: Yes.

11                 THE COURT: So if the trustee were to  
12       release those 2 million, would it go to Friedman  
13       Kaplan or would it go to these non-parties?

14                 MR. MARON: It would go to Friedman  
15       Kaplan.

16                 THE COURT: So the third parties did not  
17       advance or loan that money. It was a gift. It was  
18       an investment.

19                 MR. MARON: It's -- it was their way  
20       of -- yeah, it was their way investing in the peace.

21                 THE COURT: They're not looking for that  
22       money back?

23                 MR. MARON: I'd have to confirm all the  
24       arrangements --

25                 THE COURT: You'd have to --

## PROCEEDINGS

1                   MR. MARON: -- but I know that they put  
2 the -- I need to check what the full arrangements  
3 are. I know there were some -- there were funds  
4 advanced that, you know, could be subject to certain  
5 loans. I'm not certain, but they've been -- in the  
6 interim, at least, like, you know, from Friedman  
7 Kaplan, there was moments when they needed to get  
8 paid. There were payments made over the course of  
9 the representation. This is going back to 2018,  
10 when they first took on both TAM and Pres, and then,  
11 you know, as -- during -- they made sporadic  
12 payments from then until, I would think, you know,  
13 last summer.

14                   THE COURT: All right.

15                   MR. MOSKOWITZ: Your Honor?

16                   THE COURT: Yes. Who's this?

17                   MR. MOSKOWITZ: I apologize for any  
18 interruption, but it's Elliot Moskowitz at Davis  
19 Polk for Citi. I just want to have the opportunity  
20 to be heard for a minute at an appropriate time.  
21 Just one. Don't forget about me.

22                   THE COURT: Let me just finish up with  
23 Mr. Maron.

24                   I think what you're saying to me is that  
25 you think that if the trustee released or "advanced"

## PROCEEDINGS

1 the funds which have been withheld for payment of  
2 the Triaxx Asset Management legal fees, they would  
3 go to counsel to pay counsel's bills rather than  
4 going to pay back the third parties which have -- I  
5 don't know what word to use -- fronted? Advanced?  
6 Gifted?

7 MR. MARON: Yes.

8 THE COURT: Invested?

9 MR. MARON: The --

10 THE COURT: -- funds to pay a portion of  
11 the firm's bills, but you're not certain.

12 MR. MARON: Well -- but just to go back  
13 for a second to what Mr. Lorenzo pointed out before,  
14 you know, there's a process that happens when -- you  
15 know, when the -- their administrative expense is  
16 thrown off from each of the deals and, you know,  
17 invoices are submitted. And as part of that,  
18 including invoices from -- you know, from Friedman  
19 Kaplan and, you know, monies are allocated for  
20 certain bills, but then they're held in escrow. But  
21 Friedman Kaplan doesn't get those because they're  
22 all being -- they're all made part of what this,  
23 what this retained funds group is.

24 THE COURT: Okay. So maybe I'm just not  
25 asking the question the right way since, obviously,

## PROCEEDINGS

1 I'm not, you know, in the back office seeing the  
2 documents go back and forth.

3 When you have submitted those bills for  
4 payment, and then you don't get payment because they  
5 withhold the money and keep a running tab of what  
6 they're withholding --

7 MR. MARON: Right.

8 THE COURT: -- are you submitting the  
9 full Friedman Kaplan bills or only the portion that  
10 these third parties are not paying?

11 MR. MARON: The full bills.

12 THE COURT: Well, in that case, there  
13 should be 4 million, shouldn't there, being  
14 escrowed, not 2 million?

15 MR. MARON: I need to go back and look at  
16 the latest reports because there's multiple -- you  
17 know, because of all the work that was done for the  
18 parties, but I have to go back and check.

19 THE COURT: Okay.

20 MS. BEAUMONT: Your Honor, perhaps --

21 THE COURT: Hold -- sorry. Ms. Beaumont,  
22 yes?

23 MS. BEAUMONT: I was just going to  
24 explain. There -- the full amount of our bills,  
25 while it may have been submitted to the CDOs for

## PROCEEDINGS

1 payment, has not all been set aside and retained  
2 because there is not always enough money each month  
3 to cover all of the various invoices that are out  
4 there that require payment. There's a cap on how  
5 much is allocated each month for each --

6 THE COURT: So because of the monthly  
7 cap, in some months, you don't even ask for the full  
8 amount?

9 MS. BEAUMONT: It's -- yeah. It's not as  
10 if each month we send a monthly bill to the CDOs.  
11 It's whatever is available gets applied and set  
12 aside.

13 THE COURT: All right. Okay. That's  
14 about as much understanding as I'm going to glean  
15 from today.

16 Mr. Moskowitz, here's your minute.

17 MR. MOSKOWITZ: Oh, thank you. Maybe 90  
18 seconds. Thank you very much, Your Honor. Just a  
19 few quick points, and I'll aim to not be  
20 duplicative.

21 As Mr. Savla noted, Citi did join the  
22 letter that PIMCO submitted, so that letter was --  
23 and the points made in the letter and the points  
24 that Mr. Savla made today are all endorsed by Citi  
25 as well.

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1                   Just a few additional glosses on the  
2 things that have been said. So, first of all, just  
3 in case there's any doubt about this, there are some  
4 parties in the case that are paying their own fees  
5 out of their own pockets, and that would be PIMCO  
6 and Citi. And we've paid our own fees throughout,  
7 and we continue to bear our own fees. And we're  
8 talking about the equities and what should happen  
9 here. It's not like, you know, we -- it's not like  
10 anybody -- anyone on the noteholder side is getting  
11 a free ride. To the contrary, we're bearing a  
12 substantial legal expense.

13                  In addition, Your Honor, we're having a  
14 nice discussion about these funds, but it should be  
15 noted that if these funds were to be paid out for  
16 legal fees at this point in time, that would work a  
17 severe prejudice on the noteholders because this  
18 is -- I'm not sure there's any way to get that money  
19 back, and these funds are potentially a significant  
20 portion of what our potential recovery would be in  
21 the case because there's a finite amount of money  
22 that exists right now. And if that money goes out  
23 the door, then the noteholders potential recovery is  
24 potentially greatly imperiled. So it's not just an  
25 idle question about what's fair. It's actually

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1 quite prejudicial to the noteholders if the money  
2 goes out the door.

3                   In addition, as I think you heard -- and  
4 I don't know what they're going to say in their  
5 motion, but -- if they make one -- but this is  
6 entirely a self-created hardship where this is  
7 coming to Your Honor, like, on the eve of trial. A  
8 lot could have been done differently to have avoided  
9 the self-created problem that they're bringing to  
10 your doorstep right now, and there has to be  
11 consequences for that.

12                  I would also add that I think -- I mean,  
13 I don't know what they're going to say in their  
14 motion, but it's like -- I would think it's, sort  
15 of, law of the case already. And, frankly, any  
16 motion that they put before you, if it just says the  
17 same things that they previously argued before  
18 Judge Marrero, I mean, the -- I'm not sure that  
19 there's an -- even, like, a Rule 11 basis to make  
20 such a motion at this point in time. Certainly,  
21 there would be no basis to make a motion that has as  
22 its predicate unnamed parties or not showing up in  
23 court.

24                  I mean, to me, just taking a step back  
25 from all of this, this is a last-minute play before

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1 the trial to try to get some of these funds released  
2 to help cover legal fees that somebody, who they  
3 won't tell you who it is, has been covering to this  
4 point in time.

5 I've -- I'm firmly of the belief that, if  
6 this were to be denied, somebody's going to continue  
7 to cover those legal fees because they've been doing  
8 it to this point not based on charity. They've been  
9 doing it because it's in their own financial  
10 interest.

11 But it doesn't matter anyways what my  
12 speculation is. If someone's coming to the Court on  
13 the eve of trial with a self-created hardship,  
14 making arguments that have already been rejected to  
15 this Court twice before, I don't think there should  
16 be much sympathy for that. And so I know that it --  
17 the Court's being very patient with our adversaries  
18 in talking about where the funds might go, but from  
19 our perspective, this is working a severe prejudice  
20 and should not be seriously countenanced as we're  
21 all preparing for trial.

22 Just wanted to put those thoughts before  
23 Your Honor.

24 THE COURT: All right. Thank you, all,  
25 very much. I --

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1 MR. MARON: Your Honor, can I -- it's  
2 Matthew Maron again. Can I just add one thing to  
3 what -- I want to say something in response to what  
4 Mr. Moskowitz just said.

5 THE COURT: One minute. Go ahead.

6 MR. MARON: I'll be done in 30 seconds.

7 We're not Citi. We're not PIMCO. We're  
8 not U.S. Bank. It's a big difference when  
9 Mr. Moskowitz says, well, his client can pay their  
10 fees. It's Citibank. We're not Citibank. It's a  
11 very different animal.

12 The other thing is we're -- again, this  
13 isn't the eve of trial. We made this application  
14 almost -- you know, close -- a little under three  
15 months before. We didn't want to have to do this,  
16 but the circumstances were we were told that, you  
17 know, our current counsel was intending to withdraw  
18 necessitated us making this application. So that's  
19 it.

20 MR. SAVLA: Your Honor, this is  
21 Mr. Savla. If I may respond to a couple of  
22 points --

23 THE COURT: Gentlemen, I've heard enough.  
24 Thank you, all, very much.

25 I am not going to issue any orders,

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1 whether scheduling orders or funding orders or  
2 withdrawal orders on the basis of the tantalizingly  
3 incomplete record that I have in the form of,  
4 essentially, from the moving parties, three pages of  
5 letter brief, total. So your pretrial deadlines  
6 stand.

7 If Friedman Kaplan wishes to be let out  
8 of its responsibilities as counsel of record for  
9 Triaxx Asset Management and Phoenix, it must make a  
10 motion supported by admissible evidence in  
11 compliance with Local Civil Rule 1.4. It may  
12 accompany that motion with a sealing motion with  
13 respect to matters which are deemed sensitive, but I  
14 want to be clear, I am making no guarantee as to --  
15 I don't want to prejudge, in other words, how that  
16 sealing motion will come out.

17 With regard to the schedule, if, in fact,  
18 Triaxx Asset Management and Phoenix are seriously  
19 negotiating with a potential successor firm, if  
20 that's real and not just smoke, and if they find  
21 such a firm, and if that firm in short order -- and  
22 by "short order," I mean perhaps this week or next  
23 week -- appears in this case and is ready, willing  
24 and able to take the case through trial, I would, at  
25 that point, consider a reasonable extension of

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1 whatever the remaining pretrial deadlines may be,  
2 including the trial date itself, to allow new  
3 counsel to get up to speed. But I'm not going to be  
4 doing that given the current state of play.

5 With regard to letting -- with regard to,  
6 really, ordering the trustee, over the strenuous  
7 objections of the noteholders, to advance funds to  
8 the Triaxx parties for purposes of funding the  
9 remainder of their defense costs in this case, let  
10 me be as candid as I can with you. You can make the  
11 motion, which I would consider a preliminary  
12 injunction motion, which would have to meet all of  
13 the ordinary prongs of a preliminary injunction  
14 motion. If you're short on cash, pay your trial  
15 counsel. I don't know that I would recommend you  
16 spending your motion -- your money on that motion  
17 because I think you have a very, very steep bit of  
18 uphill sledding to do on any such motion, given the  
19 law of the case, given the timing, and given the  
20 fact that, as a preliminary injunction motion, I  
21 would view it as having been made awfully late in  
22 the day. But I don't tell people what motions they  
23 can make. I just try to be clear about what odds  
24 they are facing.

25 So I don't think there's anything further

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1 for me to do today. If you're going to make the  
2 motions, make them as quick as you can.

3 Will there be anything further?

4 All right. Looking --

5 MR. MARON: No, Your Honor.

6 THE COURT: I am reminded, and I will  
7 remind you as well, that you have a joint pretrial  
8 order due on February the 22nd, so I hope you're  
9 working on that.

10 Thank you, all, very much. We'll be  
11 adjourned.

12 MR. MOSKOWITZ: Thank you, Your Honor.

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1 C E R T I F I C A T E  
2

3 I, Adrienne M. Mignano, certify that the  
4 foregoing transcript of proceedings in the case of  
5 U.S. Bank National Association v. Triaxx Asset  
6 Management LLC; Docket #18CV4044 was  
7 prepared using digital transcription software and is  
8 a true and accurate record of the proceedings.

9

10

11 Signature

Adrienne M. Mignano

12

ADRIENNE M. MIGNANO, RPR

13

14 Date: April 20, 2023

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